

## § 195.5

## 32 CFR Ch. I (7-1-15 Edition)

other benefit provided under the program;

(vii) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(5) Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race,

color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color, or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising; employment, layoff or termination; upgrading, demotion or transfer; rates of pay and/or other forms of compensation; and use of facilities), to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a component pursuant to this provision with respect to a state or local agency subject to Standards for a Merit System of Personnel Administration, 45 CFR part 70, shall be consistent with those standards and shall be coordinated with the U.S. Civil Service Commission.

(6) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in paragraph (a) of this section.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17959, July 5, 1973]

### § 195.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower) shall be responsible for insuring that the policies of this part are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of Defense.

(b) The Secretary of each Military Department is responsible for implementing this part with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower) is responsible for similarly implementing this part

with respect to all other components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with § 195.2(b).

(c) The Assistant Secretary of Defense (Manpower) or, after consultation with the Assistant Secretary of Defense (Manpower), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 195.11), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

[29 FR 19291, Dec. 31, 1964. Redesignated and amended at 56 FR 32965, July 18, 1991]

#### § 195.6 Assurances required.

(a) *General.* (1)(i) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part.

(ii) In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the

recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of sub-guarantees, contractors and sub-contractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property